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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**KEITH HOBBS**, individually,  
and on behalf of all others  
similarly situated,

Plaintiff,

v.

**GOSMITH, INC.**, and DOES 1-  
10, and each of them,

Defendant.

**Case No.:**

**CLASS ACTION**

**COMPLAINT FOR DAMAGES  
AND INJUNCTIVE RELIEF  
PURSUANT TO THE TELEPHONE  
CONSUMER PROTECTION ACT,  
47 U.S.C. § 227, ET SEQ.**

**JURY TRIAL DEMANDED**

**INTRODUCTION**

1. Plaintiff, KEITH HOBBS (“Plaintiff”), brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Defendant, GOSMITH, INC. (“Defendant”), in negligently and knowingly or willfully contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy.

1           2.     The TCPA was designed to prevent calls and messages like the ones  
2 described within this complaint, and to protect the privacy of citizens like Plaintiff.  
3 “Voluminous consumer complaints about abuses of telephone technology – for  
4 example, computerized calls dispatched to private homes – prompted Congress to  
5 pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

6           3.     In enacting the TCPA, Congress intended to give consumers a choice  
7 as to how creditors and telemarketers may call them, and made specific findings  
8 that “[t]echnologies that might allow consumers to avoid receiving such calls are  
9 not universally available, are costly, are unlikely to be enforced, or place an  
10 inordinate burden on the consumer.    TCPA, Pub.L. No. 102–243, § 11. Toward  
11 this end, Congress found that  
12

13                   [b]anning such automated or prerecorded telephone calls to the home,  
14 except when the receiving party consents to receiving the call or when  
15 such calls are necessary in an emergency situation affecting the health  
16 and safety of the consumer, is the only effective means of protecting  
17 telephone consumers from this nuisance and privacy invasion.

18 *Id.* at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL  
19 3292838, at\* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s  
20 purpose).

21           4.     Congress also specifically found that “the evidence presented to the  
22 Congress indicates that automated or prerecorded calls are a nuisance and an  
23 invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. See also,  
24 *Mims*, 132 S. Ct. at 744.

25           5.     As Judge Easterbrook of the Seventh Circuit recently explained in a  
26 TCPA case regarding calls to a non-debtor similar to this one:  
27  
28

1 The Telephone Consumer Protection Act ... is well known for its  
2 provisions limiting junk-fax transmissions. A less-litigated part of the  
3 Act curtails the use of automated dialers and prerecorded messages to  
4 cell phones, whose subscribers often are billed by the minute as soon  
5 as the call is answered—and routing a call to voicemail counts as  
6 answering the call. An automated call to a landline phone can be an  
annoyance; an automated call to a cell phone adds expense to  
annoyance.

7 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

8 6. The Ninth Circuit recently affirmed certification of a TCPA class case  
9 remarkably similar to this one in *Meyer v. Portfolio Recovery Associates, LLC*, \_\_  
10 F.3d\_\_, 2012 WL 4840814 (9<sup>th</sup> Cir. Oct. 12, 2012).

11 7. Plaintiff alleges as follows upon personal knowledge as to himself and  
12 his own acts and experiences, and, as to all other matters, upon information and  
13 belief, including investigation conducted by their attorneys.

14 **JURISDICTION AND VENUE**

15 8. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,  
16 a resident of California, seeks relief on behalf of a Class, which will result in at  
17 least one class member belonging to a different state than that of Defendant, a  
18 Delaware corporation headquartered in California. Plaintiff also seeks \$1,500.00 in  
19 damages for each call in violation of the TCPA, which, when aggregated among a  
20 proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal  
21 court jurisdiction. Therefore, both the diversity and damages threshold under the  
22 Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has  
23 jurisdiction.

24 9. Venue is proper in the United States District Court for the Northern  
25 District of California pursuant to 28 U.S.C. § 1391(b)(1) because Defendant resides  
26 in this District.

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28 ///

**PARTIES**

10. Plaintiff, KEITH HOBBS (hereinafter, “Plaintiff”) is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153(39).

11. Defendant, GOSMITH, INC. (hereinafter, “Defendant”), is a marketing company, and is a “person” as defined by 47 U.S.C. § 153(39).

12. The above named Defendant, and its subsidiaries and agents, are collectively referred to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

13. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

**FACTUAL ALLEGATIONS**

14. Beginning on or about September 15, 2017, Plaintiff began receiving text messages from Defendant on his cellular telephone number ending in -7558.

15. During this time, Defendant began to use Plaintiff’s cellular telephone for the purpose of sending Plaintiff spam advertisements and/or promotional offers, via text messages, including multiple text messages sent to and received by Plaintiff beginning in or around September of 2017.

1           16. Defendant sent Plaintiff text messages from the shortcode 76484.

2           17. Defendant sent text messages to Plaintiff's cellular telephone  
3 soliciting Defendant's services, and after Plaintiff texted "Stop" to Defendant,  
4 Defendant continued to send text messages to Plaintiff.

5           18. In September of 2017, Plaintiff received a text message from  
6 Defendant that read:

7                   You are now unsubscribed, sorry  
8                   to see you go. You'll [sic] receive  
9                   no further messages.

10                   Just checking why you're not  
11                   interested? You can receive leads  
12                   for free. You only pay a small  
13                   connection fee for projects you  
                    are interested in.

14           19. Plaintiff once again texted "Stop" in response to the aforementioned  
15 text messages, and Defendant responded with further text messages that read as  
16 follows:

17                   You are now unsubscribed, sorry  
18                   to see you go. You'll [sic] receive  
19                   no further messages.

20                   You've been officially  
21                   unsubscribed. I can also offer you  
22                   free appointment credit to try our  
                    service.

23           20. On or about September 15, 2017, Plaintiff received upwards of twenty  
24 (20) text messages from Defendant that read similarly to the aforementioned text  
25 messages.

26           21. These text messages placed to Plaintiff's cellular telephone were  
27 placed via Defendant's *SMS Blasting Platform*, an "automatic telephone dialing  
28

1 system,” (“ATDS”) as defined by 47 U.S.C. § 227 (a)(1) as prohibited by 47 U.S.C.  
2 § 227 (b)(1)(A).

3 22. The telephone number that Defendant, or its agent called was assigned  
4 to a cellular telephone service for which Plaintiff incurs a charge for incoming calls  
5 pursuant to 47 U.S.C. § 227 (b)(1).

6 23. These telephone calls constituted calls that were not for emergency  
7 purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

8 24. These telephone calls by Defendant, or its agents, violated 47 U.S.C.  
9 § 227(b)(1).

10 25. Upon information and belief, and based upon Plaintiff’s experience of  
11 receiving several text messages from Defendant almost immediately after Plaintiff  
12 told Defendant to cease contacting him, and at all relevant times, Defendant failed  
13 to establish and implement reasonable practices and procedures to effectively  
14 prevent telephone solicitations in violation of the regulations prescribed under 47  
15 U.S.C. § 227(c)(5).  
16

17 **CLASS ACTION ALLEGATIONS**

18 26. Plaintiff brings this action on behalf of himself and on behalf of and  
19 all others similarly situated (“the Class”).

20 27. Plaintiff represents, and is a member of, the Class, consisting of the  
21 following:

22 all persons within the United States who received any  
23 unsolicited text messages from Defendant which text  
24 message was not made for emergency purposes or with the  
25 recipient’s prior express consent within the four years  
26 prior to the filing of this Complaint.

27 28. Defendant and its employees or agents are excluded from the Class.  
28 Plaintiff does not know the number of members in the Class, but believes the Class

1 members number in the hundreds of thousands, if not more. Thus, this matter  
2 should be certified as a Class action to assist in the expeditious litigation of this  
3 matter.

4 29. Plaintiff and members of the Class were harmed by the acts of  
5 Defendant in at least the following ways: Defendant, either directly or through its  
6 agents, illegally contacted Plaintiff and the Class members via their cellular  
7 telephones by using marketing and text messages, thereby causing Plaintiff and the  
8 Class members to incur certain cellular telephone charges or reduce cellular  
9 telephone time for which Plaintiff and the Class members previously paid, and  
10 invading the privacy of said Plaintiff and the Class members. Plaintiff and the  
11 Class members were damaged thereby.

12 30. This suit seeks only damages and injunctive relief for recovery of  
13 economic injury on behalf of the Class, and it expressly is not intended to request  
14 any recovery for personal injury and claims related thereto. Plaintiff reserves the  
15 right to expand the Class definition to seek recovery on behalf of additional persons  
16 as warranted as facts are learned in further investigation and discovery.

17 31. The joinder of the Class members is impractical and the disposition of  
18 their claims in the Class action will provide substantial benefits both to the parties  
19 and to the court. The Class can be identified through Defendant's records or  
20 Defendant's agents' records.

21 32. There is a well-defined community of interest in the questions of law  
22 and fact involved affecting the parties to be represented. The questions of law and  
23 fact to the Class predominate over questions which may affect individual Class  
24 members, including the following:

- 25  
26 a) Whether, within the four years prior to the filing of this  
27 Complaint, Defendant or its agents sent any text messages to  
28 the Class (other than a message made for emergency purposes

1 or made with the prior express consent of the called party) to a  
2 Class member using any automatic dialing system to any  
3 telephone number assigned to a cellular phone service;

4 b) Whether Plaintiff and the Class members were damaged  
5 thereby, and the extent of damages for such violation; and

6 c) Whether Defendant and its agents should be enjoined from  
7 engaging in such conduct in the future.

8  
9 33. As a person that received at least one marketing and text message  
10 without Plaintiff's prior express consent, Plaintiff is asserting claims that are  
11 typical of the Class. Plaintiff will fairly and adequately represent and protect the  
12 interests of the Class in that Plaintiff has no interests antagonistic to any member  
13 of the Class.

14 34. Plaintiff and the members of the Class have all suffered irreparable  
15 harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class  
16 action, the Class will continue to face the potential for irreparable harm. In  
17 addition, these violations of law will be allowed to proceed without remedy and  
18 Defendant will likely continue such illegal conduct. Because of the size of the  
19 individual Class member's claims, few, if any, Class members could afford to seek  
20 legal redress for the wrongs complained of herein.

21 35. Plaintiff has retained counsel experienced in handling class action  
22 claims and claims involving violations of the Telephone Consumer Protection Act.

23 36. A class action is a superior method for the fair and efficient  
24 adjudication of this controversy. Class-wide damages are essential to induce  
25 Defendant to comply with federal and State law. The interest of Class members in  
26 individually controlling the prosecution of separate claims against Defendant is  
27 small because the maximum statutory damages in an individual action for violation  
28



1 of privacy are minimal. Management of these claims is likely to present  
2 significantly fewer difficulties than those presented in many class claims.

3 37. Defendants have acted on grounds generally applicable to the Class,  
4 thereby making appropriate final injunctive relief and corresponding declaratory  
5 relief with respect to the Class as a whole.

6 **FIRST CAUSE OF ACTION**

7 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

8 **47 U.S.C. § 227 ET SEQ.**

9 **ON BEHALF OF PLAINTIFF AND THE CLASS AGAINST DEFENDANT**

10 38. Plaintiff incorporates by reference all of the above paragraphs of this  
11 Complaint as though fully stated herein.

12 39. The foregoing acts and omissions of Defendant constitutes numerous  
13 and multiple negligent violations of the TCPA, including but not limited to each  
14 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

15 40. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et  
16 seq, Plaintiff and The Class are entitled to an award of \$500.00 in statutory  
17 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

18 41. Plaintiff and the Class are also entitled to and seek injunctive relief  
19 prohibiting such conduct in the future.

20 **SECOND CAUSE OF ACTION**

21 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**

22 **TELEPHONE CONSUMER PROTECTION ACT**

23 **47 U.S.C. § 227 ET SEQ.**

24 **ON BEHALF OF PLAINTIFF AND THE CLASS AGAINST DEFENDANT**

25 42. Plaintiff incorporates by reference all of the above paragraphs of this  
26 Complaint as though fully stated herein.  
27  
28

43. The foregoing acts and omissions of Defendant constitutes numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

44. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

45. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

## PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff, and The Class members the following relief against Defendants:

**FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF  
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF  
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$1500.00 in statutory

1 damages, for each and every violation, pursuant to 47 U.S.C. §  
2 227(b)(3)(B).

- 3 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such  
4 conduct in the future.  
5 • Any other relief the Court may deem just and proper.

6 **TRIAL BY JURY**

7 46. Pursuant to the seventh amendment to the Constitution of the United  
8 States of America, Plaintiff is entitled to, and demands, a trial by jury on all issues  
9 so triable.  
10

11 Dated: November 25, 2017

Respectfully submitted,

12  
13 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

14 By: /s/ Todd M. Friedman  
15 Todd M. Friedman  
16 Law Offices of Todd M. Friedman, P.C.  
17 Attorney for Plaintiff  
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